

## § 239.60

of conversion shares. The minimum number of shares must equal the lesser of the number of shares obtained by a \$500 subscription or 25 shares.

(4) In setting purchase limitations under this section, the mutual holding company may not aggregate conversion shares attributed to a person in the tax-qualified employee stock ownership plan with shares purchased directly by, or otherwise attributable to, that person.

(c) *Purchase preference for persons in the local community.* (1) In the subscription offering, subject to the purchase priorities set forth in paragraph (a) of this section, the mutual holding company may give a purchase preference to eligible account holders, supplemental eligible account holders, and voting members residing in the local community.

(2) In the community offering, the mutual holding company must give a purchase preference to natural persons residing in the local community.

(p) *Conditions on community offerings and public offerings.* (1) If the mutual holding company offers conversion shares in a community offering, a public offering, or both, it must offer and sell the stock to achieve a widespread distribution of the stock.

(2) If the mutual holding company offers shares in a community offering, a public offering, or both, it must first fill orders for the stock up to a maximum of two percent of the conversion stock on a basis that will promote a widespread distribution of stock. The mutual holding company must allocate any remaining shares on an equal number of shares per order basis until it fills all orders.

## § 239.60 Completion of the offering.

(a) *Deadline for completing the sale of stock.* The mutual holding company must complete all sales of the stock within 45 calendar days after the last day of the subscription period, unless the offering is extended under paragraph (b) of this section.

(b) *Offering period extension.* (1) The mutual holding company must request, in writing, an extension of any offering period.

(2) The Board may grant extensions of time to sell the shares. The Board

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will not grant any single extension of more than 90 days.

(3) If the Board grants the request for an extension of time, the mutual holding company must provide a post-effective amendment to the offering circular under § 239.58(c) to each person who subscribed for or ordered stock. The amendment must indicate that the Board extended the offering period and that each person who subscribed for or ordered stock may increase, decrease, or rescind their subscription or order within the time remaining in the extension period.

## § 239.61 Completion of the conversion.

(a) *Completion of the conversion.* (1) In the plan of conversion, the mutual holding company must set a date by which the conversion must be completed. This date must not be more than 24 months from the date that the members approve the plan of conversion. The date, once set, may not be extended by the mutual holding company or by the Board. The mutual holding company must terminate the conversion if it is not completed by that date.

(2) The conversion is complete on the date that the mutual holding company accepts the offers for stock of the resulting stock holding company.

(b) *Termination of the conversion.* (1) The members may terminate the conversion by failing to approve the conversion at the members' meeting.

(2) The mutual holding company may terminate the conversion before the members' meeting.

(3) The mutual holding company may terminate the conversion after the members' meeting only if the Board concurs.

(c) *Voting rights for stockholders following conversion.* The resulting stock holding company must provide the stockholders with exclusive voting rights.

(d) *Rights of savings account holders.* The resulting stock holding company must provide a liquidation account for each eligible and supplemental eligible account holder under § 239.62(a)(1)–(3).

## § 239.62 Liquidation accounts.

(a) *Liquidation account.* (1) A liquidation account represents the potential interest of eligible account holders and

supplemental eligible account holders in the mutual holding company's net worth at the time of conversion. The resulting stock holding company must maintain a sub-account to reflect the interest of each account holder.

(2) Before the resulting stock holding company may provide a liquidation distribution to common stockholders, the resulting stock holding company must give a liquidation distribution to those eligible account holders and supplemental eligible account holders who hold savings accounts from the time of conversion until liquidation.

(3) The resulting stock holding company may not record the liquidation account in the financial statements. The resulting stock holding company must disclose the liquidation account in the footnotes to the financial statements.

(4) The initial balance of the liquidation account is the net worth in the statement of financial condition included in the final offering circular.

(b) *Liquidation sub-accounts.* (1)(i) The resulting stock holding company determines the initial sub-account balance for a savings account held by an eligible account holder by multiplying the initial balance of the liquidation account by the following fraction: The numerator is the qualifying deposit in the savings account on the eligibility record date. The denominator is total qualifying deposits of all eligible account holders on that date.

(ii) The resulting stock holding company determines the initial sub-account balance for a savings account held by a supplemental eligible account holder by multiplying the initial balance of the liquidation account by the following fraction: The numerator is the qualifying deposit in the savings account on the supplemental eligibility record date. The denominator is total qualifying deposits of all supplemental eligible account holders on that date.

(iii) If an account holder holds a savings account on the eligibility record date and a separate savings account on the supplemental eligibility record date, the resulting stock holding company must compute separate sub-accounts for the qualifying deposits in the savings account on each record date.

(2) The resulting stock holding company may not increase the initial sub-account balances. The resulting stock holding company must decrease the initial balance under § 239.62(d) as depositors reduce or close their accounts.

(c) *Retention of voting rights based on liquidation sub-accounts.* Eligible account holders or supplemental eligible account holders do not retain any voting rights based on their liquidation sub-accounts.

(d) *Adjusting liquidation sub-accounts.*

(1)(i) The resulting stock holding company must reduce the balance of an eligible account holder's or supplemental eligible account holder's sub-account if the deposit balance in the account holder's savings account at the close of business on any annual closing date, which for purposes of this section is the fiscal year end, after the relevant eligibility record dates is less than:

(A) The deposit balance in the account holder's savings account at the close of business on any other annual closing date after the relevant eligibility record date; or

(B) The qualifying deposits in the account holder's savings account on the relevant eligibility record date.

(ii) The reduction must be proportionate to the reduction in the deposit balance.

(2) If the resulting stock holding company reduces the balance of a liquidation sub-account, the resulting stock holding company may not subsequently increase it if the deposit balance increases.

(3) The resulting stock holding company is not required to adjust the liquidation account and sub-account balances at each annual closing date if it maintains sufficient records to make the computations if a liquidation sub-sequently occurs.

(4) The resulting stock holding company must maintain the liquidation sub-account for each account holder as long as the account holder maintains an account with the same social security number or tax identification number, as applicable.

(5) If there is a complete liquidation, the resulting stock holding company must provide each account holder with a liquidation distribution in the amount of the sub-account balance.

(e) *Liquidation defined.* (1) For purposes of this subpart, a liquidation is a sale of the assets and settlement of the liabilities with the intent to cease operations and close. Upon liquidation, the resulting stock holding company must return the charter to the governmental agency that issued it. The governmental agency must cancel the charter.

(2) A merger, consolidation, or similar combination or transaction with another depository institution, is not a liquidation. If the resulting stock holding company is involved in such a transaction, the surviving institution must assume the liquidation account.

(f) *Effect of liquidation on net worth.* The liquidation account does not affect the net worth.

**§ 239.63 Post-conversion.**

(a) *Management stock benefit plans.* (1) During the 12 months after the conversion, the resulting stock holding company may implement a stock option plan (Option Plan), an employee stock ownership plan or other tax-qualified employee stock benefit plan (collectively, ESOP), and a management recognition plan (MRP), provided the resulting stock holding company meets all of the following requirements.

(i) The resulting stock holding company discloses the plans in the proxy statement and offering circular and indicates in the offering circular that there will be a separate shareholder vote on the Option Plan and the MRP at least six months after the conversion. No shareholder vote is required to implement the ESOP. The ESOP must be tax-qualified.

(ii) The Option Plan does not exceed more than ten percent of the number of shares that the resulting stock holding company issued in the conversion.

(iii)(A) The ESOP and MRP do not exceed, in the aggregate, more than ten percent of the number of shares that the resulting stock holding company issued in the conversion. If the resulting stock holding company has tangible capital of ten percent or more following the conversion, the Board may permit the ESOP and MRP to represent, in the aggregate, up to 12 percent of the number of shares issued in the conversion; and

(B) The MRP does not exceed more than three percent of the number of shares that the resulting stock holding company issued in the conversion. If the resulting stock holding company has tangible capital of ten percent or more after the conversion, the Board may permit the MRP to represent up to four percent of the number of shares that the resulting stock holding company issued in the conversion.

(iv) No individual receives more than 25 percent of the shares under any plan.

(v) The directors who are not the officers do not receive more than five percent of the shares of the MRP or Option Plan individually, or 30 percent of any such plan in the aggregate.

(vi) The shareholders approve each of the Option Plan and the MRP by a majority of the total votes eligible to be cast at a duly called meeting before the resulting stock holding company establishes or implements the plan. The resulting stock holding company may not hold this meeting until six months after the conversion.

(vii) When the resulting stock holding company distributes proxies or related material to shareholders in connection with the vote on a plan, the resulting stock holding company states that the plan complies with Board regulations and that the Board does not endorse or approve the plan in any way. The resulting stock holding company may not make any written or oral representations to the contrary.

(viii) The resulting stock holding company does not grant stock options at less than the market price at the time of grant.

(ix) The resulting stock holding company does not fund the Option Plan or the MRP at the time of the conversion.

(x) The plan does not begin to vest earlier than one year after shareholders approve the plan, and does not vest at a rate exceeding 20 percent per year.

(xi) The plan permits accelerated vesting only for disability or death, or if the resulting stock holding company undergoes a change of control.

(xii) The plan provides that the executive officers or directors must exercise or forfeit their options in the